

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE Ms. JUSTICE J. UMA DEVI

Writ Appeal No.707 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in W.P. No. 13553 of 2018 dated 20.4.2018. The appellant herein is the 7th respondent in the Writ Petition. The 1st respondent herein filed the said Writ Petition seeking a writ of certiorari to call for the records relating to the order passed by the Election Tribunal-cum-Junior Civil Judge, Suryapet in EOP No. 1 of 2013 dated 10.4.2018 allowing the Election Petition filed by the appellant-7th respondent in part and in directing recounting of votes polled for the post of Sarpanch, Kudakuda Gram Panchayat by the Mandal Parishad Development Officer, Chivemla Mandal on 21.4.2018 in the presence of both the parties. I.A. No.1 of 2018 was filed therein seeking suspension of the order passed by the Election Tribunal.

Elaborate submissions were put forth on behalf of the 1st respondent-writ petitioner by her Counsel, Sri V.Ravi Kiran Rao, and on behalf of the appellant-7th respondent by her counsel, Sri Virupaksha Dattatreya Gouda, including that, since the impugned order did not suffer from a jurisdictional error, the 1st respondent-writ petitioner was not entitled for a writ of certiorari. All these contentions and the judgments cited by the learned counsel have been noted by the learned Single Judge in the order under appeal. The learned Single Judge, however, granted interim suspension of the order, without examining whether a *prima facie* case warranting issuance of a writ of certiorari was made out, holding that, since the 1st respondent-writ petitioner was holding Office as a Sarpanch from 27.7.2013, the balance of convenience was in her favour.

The certiorari jurisdiction exercised by this Court is supervisory, and not even appellate. It is only if the order, impugned in the Writ Petition, is held to

suffer from lack of jurisdiction or an error apparent on the face of the record would interference have been justified (**Syed Yakoob vs. K.S. Radhakrishnan and Others**¹). It is only if the learned Single Judge had recorded his, *prima facie*, satisfaction, assigning reasons therefor, that the order impugned in the Writ Petition suffered from lack of jurisdiction or from an error apparent on the face of the record, could the interim order, suspending the order passed by the Election Tribunal, have been passed. It is only after a *prima facie* case, warranting interference of this Court in its certiorari jurisdiction is made out, would the Court then be required to examine where the balance of convenience lies. As the learned Single Judge has not held that a *prima facie* case, warranting exercise of the certiorari jurisdiction, has been made out, the order under appeal must be, and is accordingly, set aside.

Needless to state that this order shall not disable the learned counsel for the 1st respondent-writ petitioner from requesting the learned Single Judge to take up the IA, for grant of interim relief, for an early hearing. We have no reason to doubt that, on such a request being made, the learned Single Judge would give such a request its due consideration.

The Writ Appeal is, accordingly, disposed of. The miscellaneous petitions pending, if any, shall stand disposed of. No costs.

(**RAMESH RANGANATHAN, ACJ**)

(**J. UMA DEVI, J**)

4th June, 2018

Note:

Furnish c.c. in two days.

b/o

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¹ AIR 1964 SC 477

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